

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL PRIORITY

C O N F I D E N T I A L STATE 240706

E.O. 11652: GDS

TAGS: SHUM, MASS, KS

SUBJECT: CONGRESSIONAL REQUEST FOR HUMAN RIGHTS INFO

REF: STATE 231122

1. SENATOR HUMPHREY AS CHAIRMAN OF THE FOREIGN ASSISTANCE SUBCOMMITTEE HAS ASKED THE DEPARTMENT TO PROVIDE THE SUBCOMMITTEE STAFF BASIC HUMAN RIGHTS DATA AND INFORMATION ON 17 COUNTRIES INCLUDING ROK, ON A CONFIDENTIAL BASIS FOR THE STAFF'S USE IN PREPARING LEGISLATION. IN RESPONSE TO THIS REQUEST, THE SECRETARY HAS AUTHORIZED US TO PROVIDE THE SUBCOMMITTEE WITH THIS BASIC DATA AND INFORMATION USING AS A BASIS THEREFORE UPDATED DRAFTS OF HUMAN RIGHTS OBSERVANCE REPORTS ON THE 17 COUNTRIES WHICH THE DEPARTMENT HAS BEEN PREPARING FOR POSSIBLE SUBMISSION EARLY NEXT YEAR IN ACCORDANCE WITH SECTION 502B(B) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED BY THE INTER-CONFIDENTIAL

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NATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976. (THE TEXT AND A DISCUSSION OF THE RELEVANT LEGISLATIVE PROVISIONS WERE TRANSMITTED BY REFTEL.) ALL INFORMATION WILL BE PROVIDED ON A CLASSIFIED BASIS, AS

SENATOR HUMPHREY REQUESTED AND THE SECRETARY HAS DIRECTED, ALTHOUGH PUBLIC DISCLOSURE CANNOT BE PRECLUDED.

2. WE HAVE INFORMED THE SUBCOMMITTEE THAT THE REQUESTED INFORMATION IS BEING COLLECTED AND PREPARED FOR TURN-OVER IN TWO WEEKS, I.E., OCTOBER 8. ACCORDINGLY, CORRECTIONS, UPDATING INFORMATION, COMMENTS AND EMBASSY CLEARANCE ON THE LATEST, PARTIALLY CLEARED, DRAFT OF THE HUMAN RIGHTS OBSERVANCE ON KOREA, TRANSMITTED BELOW, ARE NEEDED URGENTLY, BY COB WASHINGTON SEPTEMBER 30 LATEST, TO ALLOW TIME FOR COMPLETION OF THE CLEARANCE PROCESS, TYPING AND SUBMISSION TO CONGRESS BY THE DEADLINE INDICATED.

3. TEXT OF DRAFT HUMAN RIGHTS REPORT FOR KOREA FOLLOWS. QUOTE.

4. I. POLITICAL SITUATION

AFTER THE ESTABLISHMENT OF THE REPUBLIC OF KOREA IN 1948, SYNGMAN RHEE WAS ELECTED KOREA'S FIRST PRESIDENT. PRESIDENT RHEE RESIGNED IN 1960 AND WAS FOLLOWED BY PRIME MINISTER CHANG MYON, WHO WAS OVERTHROWN BY A MILITARY COUP LED BY GENERAL PARK CHUNG HEE IN 1961. CONSTITUTIONAL GOVERNMENT WAS RESTORED IN 1963 WITH PARK CHUNG HEE ELECTED PRESIDENT.

AFTER A DECLARATION OF MARTIAL LAW IN OCTOBER 1972, THE CONSTITUTION WAS EXTENSIVELY CHANGED. THE PRESENT YUSHIN CONSTITUTION PROVIDED FOR INDIRECT ELECTION OF THE PRESIDENT, AND GREATLY INCREASES HIS POWERS. PRESIDENT PARK WAS ELECTED TO HIS PRESENT SIX-YEAR TERM IN DECEMBER 1972.

5. II. LEGAL SITUATION

THE YUSHIN CONSTITUTION AUTHORIZES THE PRESIDENT TO SUSPEND TEMPORARILY CERTAIN RIGHTS OTHERWISE GUARANTEED TO CONFIDENTIAL

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THE PEOPLE WHEN AN EMERGENCY SITUATION IS DEEMED TO EXIST. SUCH EMERGENCY MEASURES WERE DECLARED IN 1974 AND 1975. UNDER THE 1974 EMERGENCY MEASURES, 203 PERSONS WERE TRIED; 168 WERE SUBSEQUENTLY RELEASED, ALTHOUGH NOT PARDONED. THE REMAINING PRISONERS WERE FOUND GUILTY OF CRIMES UNDER EXISTING STATUTES; EIGHT WHO HAD BEEN SENTENCED TO DEATH UNDER THE ANTI-COMMUNIST AND NATIONAL SECURITY LAWS WERE EXECUTED.

THERE CONTINUE IN EFFECT IN THE REPUBLIC OF KOREA SIGNIFICANTLY RESTRICTIVE LEGAL MEASURES. THESE INCLUDE EMERGENCY MEASURE NO. 9 WHICH PROHIBITS SPECIFIED POLITICAL ACTIVITIES, INCLUDING CALLS FOR CONSTITUTIONAL

REVISION AND CRITICISM OF THE EMERGENCY MEASURE ITSELF; POLITICAL ACTIVITIES BY STUDENTS; AND THE REPORTING OF ACTIVITIES PROHIBITED UNDER THE EMERGENCY MEASURE, AS WELL AS SPREADING "FALSE RUMORS."

UNDER A SEPARATE LAW, IT IS ALSO A CRIMINAL OFFENSE TO "DEFAME" THE GOVERNMENT WHILE ABROAD OR IN CONTACTS WITH FOREIGNERS IN KOREA. THE KOREAN GOVERNMENT HAS JUSTIFIED ITS RESTRICTIONS ON INTERNAL POLITICAL ACTIVITY IN TERMS OF THE NEED TO INCREASE NATIONAL UNITY IN ORDER TO COPE WITH THE NORTH KOREAN THREAT AND TO PROMOTE CONTINUED ECONOMIC DEVELOPMENT. THE OPPOSITION POLITICAL PARTIES, CATHOLIC AND PROTESTANT CHURCH GROUPS AND STUDENTS HAVE BEEN AMONG THE MAIN DOMESTIC CRITICS OF THE GOVERNMENT.

UNDER THE POLITICAL PROVISIONS OF THE EMERGENCY MEASURE, WHICH PROVIDES FOR A MINIMUM SENTENCE OF ONE YEAR AND MAXIMUM SENTENCE OF 15 YEARS IMPRISONMENT, AN ESTIMATED 100 PERSONS HAVE BEEN TRIED OR ARE UNDER ARREST AWAITING TRIAL. MOST OF THOSE SENTENCED HAVE BEEN STUDENTS. IN ADDITION, 18 PROMINENT POLITICAL AND RELIGIOUS CRITICS OF THE PARK GOVERNMENT, INCLUDING FORMER OPPOSITION PRESIDENTIAL CANDIDATE KIM TAE CHUNG, WERE TRIED FOR VIOLATING EMERGENCY MEASURE NO. 9 FOR THEIR PARTICIPATION IN A MARCH 1 ANTI-GOVERNMENT STATEMENT, WHICH CALLED FOR THE ABOLISHMENT OF EMERGENCY DECREES, RESTORATION OF A PARLIAMENTARY DEMOCRACY AND AN INDEPENDENT

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JUDICIARY. THE STATEMENT ALSO CALLED UPON PRESIDENT PARK TO RESIGN BECAUSE OF HIS ECONOMIC POLICIES. THOSE EIGHTEEN WERE CONVICTED ON AUGUST 28 AND RECEIVED SENTENCES RANGING FROM TWO TO EIGHT YEARS. ANOTHER PROMINENT CRITIC OF THE REGIME, POET KIM CHI HA, IS BEING TRIED FOR VIOLATING THE BROADLY-WORDED ANTI-COMMUNIST LAW.

IN SUM, THE PRESENT YUSHIN CONSTITUTION GUARANTEES VIRTUALLY ALL THE BASIC RIGHTS AND FREEDOMS PRESCRIBED BY THE UNIVERSAL DECLARATION OF HUMAN RIGHTS BUT PROVIDES THAT THEY MAY BE - AS THEY OFTEN ARE - LIMITED BY LAW OR PRESIDENTIAL DECREE. IN EXERCISING THE EMERGENCY POWERS UNDER THE YUSHIN CONSTITUTION, THE KOREAN GOVERNMENT HAS EMPLOYED RESTRICTIVE, LEGAL, MEASURES WHICH LIMIT SOME OF THE RIGHTS LISTED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

6. III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

A. INTEGRITY OF THE PERSON

ARTICLE 3: CHAPTER II OF THE YUSHIN CONSTITUTION ASSURES MANY RIGHTS OF THE PERSON "EXCEPT AS PROVIDED BY LAW." UNDER THE EMERGENCY DECREES, ARTICLE 3 RIGHTS HAVE BEEN INFRINGED UPON BY THE USE OF SURVEILLANCE, DETENTION FOR QUESTIONING AND LENGTHY INTERROGATION WITHOUT COUNSEL.

ARTICLE 5: TORTURE IS CONSTITUTIONALLY PROHIBITED AND KOREAN GOVERNMENT OFFICIALS HAVE CONSISTENTLY DENIED THAT ANY PERSONS HAVE BEEN TORTURED WHILE UNDER INVESTIGATION. IN FEBRUARY 1975, HOWEVER, 17 FORMER PRISONERS STATED THAT THEY HAD BEEN TORTURED IN 1972 AND 1974. PSYCHOLOGICAL PRESSURE DURING INTERROGATION, INCLUDING DEPRIVATION OF SLEEP, HAS BEEN ALLEGED BY PERSONS WHO HAVE BEEN DETAINED.

ARTICLE 9: WARRANTS FOR ARREST ENTRY AND INTERROGATION ARE PROVIDED FOR IN THE CONSTITUTION AND THE CODE OF CONFIDENTIAL

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CRIMINAL PROCEDURES BUT CAN BE AND ARE SUSPENDED UNDER THE EMERGENCY MEASURES. THE ARBITRARY DETENTION OF PERSONS FOR QUESTIONING IS COMMON. HOWEVER, ARREST AND CONTINUED DETENTION WITHOUT EVENTUAL TRIAL IS NOT COMMON. WITH SOME PROMINENT EXCEPTIONS, CHARGES ARE USUALLY BROUGHT QUICKLY, AND VIRTUALLY ALL PERSONS CHARGED ARE EVENTUALLY TRIED. EXILE IS NOT PRACTICED.

ARTICLE 10: JURY TRIALS ARE NOT USED IN THE KOREAN LEGAL SYSTEM; PANELS OF JUDGES HEAR CASES. THE EXECUTIVE IS REPORTED TO HAVE EXERCISED ITS POWER TO INFLUENCE THE JUDICIARY, PARTICULARLY IN POLITICALLY SENSITIVE CASES.

ARTICLE 11: THE RIGHT TO A FAIR TRIAL IS ASSURED IN THE CONSTITUTION. IN KOREAN LEGAL PRACTICE A PERSON IS PRESUMED GUILTY UNTIL PROVEN INNOCENT, AND FEW PERSONS FORMALLY CHARGED WITH POLITICAL OFFENSES HAVE BEEN FOUND INNOCENT, ALTHOUGH OFTEN SENTENCES ARE EVENTUALLY REDUCED OR SUSPENDED. THE RIGHT OF APPEAL UP TO THE KOREAN SUPREME COURT IS READILY GRANTED IN ACCORDANCE WITH LEGAL REQUIREMENTS. LEGAL CODE REQUIREMENTS STATE THAT A SUSPECT MUST BE INDICTED WITHIN TEN DAYS OF FORMAL ARREST AND A TRIAL MUST BEGIN WITHIN SIX MONTHS OF INDICTMENT. MOST, BUT NOT ALL, TRIALS HAVE BEEN PUBLIC, ALTHOUGH PRESS COVERAGE IS OFTEN RESTRICTED.

B. OTHER FREEDOMS

DISCRIMINATION IN POLITICAL, ECONOMIC, SOCIAL OR CULTURAL MATTERS ON ACCOUNT OF SEX, RELIGION OR SOCIAL

STATUS IS PROHIBITED BY THE CONSTITUTION. KOREAN LAW IS LARGELY CONSONANT WITH THE PROVISIONS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS REGARDING DISCRIMINATION. THE CONSTITUTION ASSURES FREEDOM OF RESIDENCE AND MOVEMENT. THERE ARE NO RESTRICTIONS ON INTERNAL MOVEMENT, BUT CONTROL ON FOREIGN TRAVEL EXISTS. THE RIGHT TO INDIVIDUAL PROPERTY IS CONSTITUTIONALLY GUARANTEED AND PRACTICED. FREEDOM OF CONSCIENCE AND RELIGION ARE ALSO GUARANTEED. WHILE RELIGION IS FREELY PRACTICED, THE GOVERNMENT HAS VIEWED CERTAIN ACTIONS CONFIDENTIAL

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BY ITS RELIGIOUS CRITICS AS VIOLATING THE CONSTITUTIONAL REQUIREMENT FOR THE SEPARATION OF RELIGION AND POLITICS. THE GOVERNMENT'S RELIGIOUS CRITICS CONTEND THAT THEIR ACTIONS ARE A MANIFESTATION OF SERIOUS CONCERN ON MATTERS OF MORALITY AND CONSCIENCE.

FREEDOM OF SPEECH AND THE PRESS IS LISTED AS A CONSTITUTIONAL GUARANTEE, SUBJECT TO QUALIFICATION BY LAW. PRIOR GOVERNMENT PERMISSION IS REQUIRED FOR OUTDOOR MEETINGS OF LARGE GROUPS. INDOOR MEETINGS CAN BE HELD WITHOUT GOVERNMENT CONSENT. HOWEVER, UNDER EMERGENCY MEASURE NO. 9 ALL ASSEMBLIES AIMED AT CRITICISM OF THE CONSTITUTION ARE ILLEGAL, AS ARE UNAUTHORIZED STUDENT GATHERINGS.

7. IV. OTHER HUMAN RIGHTS REPORTING

THE SUBCOMMITTEE ON FOREIGN ASSISTANCE OF THE SENATE FOREIGN RELATIONS COMMITTEE HELD A HEARING ON U.S. FOREIGN POLICY TOWARDS THE REPUBLIC OF KOREA ON APRIL 8, 1976. IN 1975 HEARINGS ON HUMAN RIGHTS IN SOUTH KOREA WERE HELD BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS OF THE COMMITTEE ON INTERNATIONAL RELATIONS OF THE HOUSE OF REPRESENTATIVES. THIS SUBCOMMITTEE AND THE HIRC SUBCOMMITTEE ON ASIAN AND PACIFIC AFFAIRS ALSO HELD HEARINGS IN 1974 ON HUMAN RIGHTS IN KOREA.

AMNESTY INTERNATIONAL'S 1974-75 ANNUAL REPORT INCLUDED A REPORT FROM ITS MISSION TO KOREA SETTING FORTH INFORMATION ON HUMAN RIGHTS VIOLATIONS RELATED TO THE TREATMENT OF PRISONERS AND THE JUDICIAL PROCESS. THE REPORT CONTAINS DETAILS OF ALLEGED INCIDENTS OF TORTURE AND OTHER IRREGULARITIES. SIMILAR REFERENCES ARE MADE IN THE AMNESTY 1974 REPORT ON TORTURE.

FREEDOM HOUSE LISTED THE REPUBLIC OF KOREA AS "PARTLY FREE."
END QUOTE
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CONFIDENTIAL

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